Supreme Court, U.S.
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No. 09-1291

In The
Supreme Court of the United States

ANDRA CAPACI,

Petitioner,

v.

FOLMAR KENNER, LLC,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Question 1

Whether the dismissal of the Petitioner's claims constituted a violation of the Petitioner's due process rights under the Fourteenth Amendment.

Question 2

Whether the trial court abused its discretion by permitting certain comments made by the Respondent's attorney or by not allowing the Petitioner to present certain evidence.

Question 3

Whether the Petitioner's constitutional rights were violated by the trial judge's exercise of discretion in dismissing the Petitioner's claims.

Question 4

Whether the Petitioner's due process rights were violated as a result of the trial judge's failure to recuse himself.

CORPORATE DISCLOSURE

In accordance with Supreme Court Rule 29.6, Respondent discloses the following:

Folmar Kenner, LLC has no parent company and no publicly held company holds a 10% or more ownership interest in Folmar.

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STATEMENT OF THE CASE

This action was initiated by Respondent Folmar Kenner, LLC, ("Folmar") against Petitioner Andra Capaci, doing business as Andra Capaci Real Estate ("Capaci"), for breach of a lease agreement. (Pet. App. 2). Capaci counterclaimed, bringing several claims against Folmar. (Pet. App. 2-3). Folmar settled its claims against Capaci before a trial was had on those claims. (Pet. App. 3-4). Capaci testified on the fourth day of her jury trial and repeatedly volunteered information beyond that sought by the questions. (Pet. App. 4). The trial court repeatedly warned Capaci that it would terminate her testimony if she continued to volunteer information. (Pet. App. 4). After Capaci continued to ignore the trial court's warnings, the court dismissed the jury, ended the trial, and dismissed Capaci's counterclaims with prejudice. (Pet. App. 5).

An order dismissing the counterclaims and entering judgment for Folmar was entered on March 21, 2007. (Pet. App. 30). Capaci's post judgment motion arguing that the trial court erred in dismissing her claims was denied, and on May 2, 2007, Capaci filed a timely notice of appeal. (Pet. App. 22). The Alabama Court of Civil Appeals reversed the trial court's dismissal of Capaci's claims finding that her trial misconduct did not "mandate dismissal." (Pet. App. 27). The Supreme Court of Alabama reversed the judgment of the Court of Civil Appeals, holding that the trial court did not exceed its discretion in dismissing Capaci's counterclaims under Rule 41(b) of the

Alabama Rules of Civil Procedure. (Pet. App 17-18). The Petition prays that this Court will issue a Writ of Certiorari to review the Supreme Court of Alabama's judgment in this case. (Pet. 6).

REASONS FOR DENYING THE WRIT

I. The Supreme Court of Alabama's Opinion For Which The Petitioner Seeks Review Did Not Decide A Question Of Federal Law.

The Petition to review the Supreme Court of Alabama's judgment in this case presents no issues concerning important federal questions. "When a state-court decision is clearly based on state law that is both adequate and independent, [this Court] will not review the decision." *Illinois v. Rodriguez*, 497 U.S. 177, 182 (1990) (citations omitted); *see also* 28 U.S.C. § 1257. The Petition asserts that federal questions are at issue because the trial judge's alleged abuse of discretion is claimed to have violated the Petitioner's constitutional rights. However, the opinion of the Supreme Court of Alabama specifically held that the trial court did not exceed its discretion in dismissing the Petitioner's counterclaims with prejudice under Rule 41(b) of the Alabama Rules of Civil Procedure. (Pet. App. 17). This Court has consistently "adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that [it] will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court

that rendered the decision [it has] been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (citations omitted). In the present case, the Petitioner seeks review of an Alabama judgment that did not address a federal question. The Petition should be denied for this reason alone.

II. The petition fails to specify when the federal questions sought to be reviewed were raised in the state court proceedings.

This Petition omits any statement or reference to the record showing that Petitioner sought review of the federal questions presented here during the state court proceedings. Supreme Court Rule 14 requires a petition to specify "the stage in the proceedings, both in the court of first instances and in the appellate courts, when the federal questions sought to be reviewed were raised." SUP. CT. R. 14.1(g)(i).

Dismissal of a petition is proper where a petitioner fails to meet its "burden of showing that the claim" before the Supreme Court was presented to the state court. *Adams*, 520 U.S. at 90; *see also* SUP. CT. R. 14.4. In *Adams*, this Court noted the importance of this rule in that "disturb[ing] the finality of state judgments on a federal ground that the state court did not have occasion to consider" is at odds with the principles of comity. *See Adams*, 520 U.S. at 90 (citing *Webb v. Webb*, 451 U.S. 493, 500 (1981)). The *Adams* Court also held the petitioners' reference to "papers filed in the trial court" were insufficient "to

comply with our requirement that petitioners provide us with '*specific* references to the places in the record where the matter appears.'" *Id.* at 89 n.3 (citing SUP. CT. R. 14(g)(i)) (emphasis in original).

Likewise, in the present case, the Petitioner has failed to meet her burden of showing that the federal issues of which she seeks review, were properly presented in the state court proceedings. Thus, the Petition fails to comply with the requirements of Supreme Court Rule 14 and should be denied.

CONCLUSION

For all of these reasons, the Petition should be denied.

Respectfully submitted,

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Attorney for Respondent